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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,726	12/29/2003	Carol Maurer	6857P001	7540

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EXAMINER

NEWVILLE, TONI E

ART UNIT PAPER NUMBER

3671

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/748,726

Applicant(s)

MAURER ET AL.

Examiner

Toni Newville

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 17 and 18 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-16, drawn to a tool comprising a handle portion, a shaft portion, and a blade portion, classified in class 172, subclass 371.
 - II. Claims 17-18, drawn to a blade comprising two substantially disc-shaped cutting portions, classified in class 30, subclass 346.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require the blade have two cutting portions. The subcombination has separate utility such as a blade that can be attached to any cutting tool, such as a food processor.

During a telephone conversation with Paul Mendonsa on 3/10/2006 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-16.

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Affirmation of this election must be made by applicant in replying to this Office action.

Claims 17 and 18 are withdrawn from further consideration by the examiner, 37

CFR 1.142(b), as being drawn to a non-elected invention:

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1, 2, 4, 6-10, 12 and 14-16 are rejected under 35 U.S.C. 102(b) as being anticipated by Adams, US 3623556.

Regarding claim 1, Adams discloses a tool (Fig. 2) comprising:

- A handle portion (16);
- A shaft portion (17) coupled to the handle portion (16); and

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- A blade (24, 26) coupled to the shaft portion (17) including cutting portions engaged in a partially overlapping manner, wherein the cutting portions are substantially the same shape (Fig. 4).

Regarding claim 2, the handle portion (16) inherently has a length, and the shaft portion (17) has a bend (Fig. 4), the length and bend capable of orienting the blade portion (24, 26) parallel to a surface for a user standing erect.

Regarding claim 4, the handle portion (16) inherently has a length, and the shaft portion (17) has a bend (Fig. 4), the length and bend capable of orienting the blade portion (24, 26) parallel to a surface for a kneeling user.

Regarding claim 6, the two cutting portions (24, 26) are substantially disc-shaped (column 3 lines 8-10).

Regarding claim 7, the shape of the cutting portions is disclosed in the embodiment of Fig. 6 as being an octagon.

Regarding claim 8, the cutting portions (24, 26) further comprise a cutting edge formed on a circumferential edge of the cutting portions wherein the cutting edge is substantially sharp (column 3 lines 9-11).

Regarding claim 9, Adams discloses a tool (Fig. 2) comprising:

- A handle portion (16);
- A shaft portion (17) coupled to the handle portion (16); and
- A blade (24, 26) coupled to the shaft portion (17) wherein the blade portion (24, 26) includes lobes, each lobe having substantially the same shape (Fig. 4).

Regarding claims 10, the limitations therein are described above in the rejection of claims 9 and 2.

Regarding claims 12, the limitations therein are described above in the rejection of claims 9 and 4.

Regarding claims 14-16, the limitations therein are described above in the rejection of claim 9 combined with claims 6-8, respectively.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 3 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, US 3623556, in view of Webb, US 6412569.

Regarding claims 3 and 11, Adams discloses a tool as described above regarding claims 2 and 10, but fails to disclose the handle portion (16) having a length of approximately 48 inches.

Like Adams, Webb discloses a tool capable of use in a garden, comprising a blade (13), a shaft (23) and a handle (11). Unlike Adams, Webb discloses the handle (11) being approximately 48 inches long (column 6 lines 10-12).

Given the suggestion in Webb, it would have been obvious to one of ordinary skill in the art to make the handle (Adams; 16) of Adams 48 inches long because such a length is standard in the art of gardening tools to correspond to approximately the distance between chest height and the ground of a typical user, thereby simplifying operation of the tool.

6. Claims 5 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Adams, US 3623556, in view of Bryant, US 5477667.

Regarding claims 5 and 13, Adams discloses a tool as described above regarding claims 4 and 12, but fails to disclose the handle portion (16) having a length of approximately 12 inches.

Like Adams, Bryant discloses a tool capable of use in a garden, comprising a blade (30), a shaft (14) and a handle (12). Unlike Adams, Bryant discloses the handle (12) being approximately 12 inches long (column 3 lines 3-5).

Given the suggestion in Bryant, it would have been obvious to one of ordinary skill in the art to make the handle (Adams; 16) of Adams 12 inches long because such a length is standard in the art of gardening tools to correspond to approximately the distance needed by a seated or kneeling operator.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

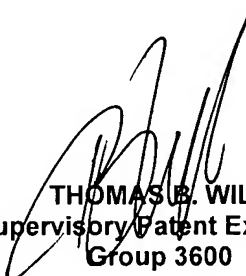
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Toni Newville whose telephone number is (571) 272 - 1548. The examiner can normally be reached on Monday - Friday 8 am - 5 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on (571) 272-6998. The fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Toni Newville
March 13, 2006



THOMAS B. WILL
Supervisory Patent Examiner
Group 3600